

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Connect America Fund
Allband Communications Cooperative
Petition for Waiver of Certain High-Cost
Universal Service Rules
WC Docket No. 10-90

ORDER

Adopted: December 7, 2015

Released: December 7, 2015

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) on an interim basis extends a waiver previously granted to Allband Communications Cooperative (Allband or company or ACC) for an additional six months until the earlier of either June 30, 2016 or the date on which further action is taken on the pending waiver request, without prejudice to the ultimate determination as to whether relief is warranted.

II. BACKGROUND

2. In the USF/ICC Transformation Order, the Commission comprehensively reformed federal universal service funding for high-cost, rural areas, adopting fiscally responsible, accountable, incentive-based policies to preserve and advance voice and broadband-capable networks while ensuring fairness for consumers and businesses that ultimately pay into the universal service fund. The Commission adopted new section 54.302, establishing a presumptive per line cap of \$250 per month on total high-cost universal service support for all eligible telecommunications carriers (ETCs), including incumbent local exchange carriers (LECs), to be phased in over three years. The Commission concluded that support in excess of that amount should not be provided without further justification.

3. The USF/ICC Transformation Order noted that "any carrier negatively affected by the universal service reforms . . . [may] file a petition for waiver that clearly demonstrates that good cause exists for exempting the carrier from some or all of those reforms, and that waiver is necessary and in the public interest to ensure that consumers in the area continue to receive voice service." The Commission

1 Connect America Fund et al., WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC 17663 (2011) (USF/ICC Transformation Order), aff'd sub nom In re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014).

2 See id. at 17670, para. 11.

3 47 C.F.R. § 54.302.

4 USF/ICC Transformation Order, 26 FCC Rcd at 17765, para. 274.

5 Id. at 17839-40, paras. 539-40. The Commission has indicated that its intent in discussing waivers relating to reductions in federal universal service fund (USF) support was not to replace the ordinary standard for granting waivers under section 1.3 of the Commission's rules, but rather to provide guidance in advance to potential applicants of the circumstances that would be persuasive and compelling grounds for grant of a waiver under that

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stated that “[w]e envision granting relief only in those circumstances in which the petitioner can demonstrate that the reduction in existing high-cost support would put consumers at risk of losing voice services, with no alternative terrestrial providers available to provide voice telephony service.”⁶ In delegating to the Bureau the authority to approve or deny requests for waiver,⁷ the Commission indicated that it did not anticipate granting waiver requests routinely or for “undefined duration[s]”⁸ and provided guidance on the types of information that would be relevant for such requests.⁹ In the *Fifth Order on Reconsideration*, the Commission further clarified that “we envision granting relief to incumbent telephone companies only in those circumstances in which the petitioner can demonstrate that consumers served by such carriers face a significant risk of losing access to a broadband-capable network that provides both voice as well as broadband today, at reasonably comparable rates, in areas where there are no alternative providers of voice or broadband.”¹⁰

4. On July 25, 2012, the Bureau granted Allband a three-year waiver of section 54.302 of the Commission’s rules so that Allband could receive the lesser of high-cost universal service support based on its actual costs or the annualized total high-cost support that it received for the period January 1, 2012 through June 30, 2012.¹¹ In that order, the Bureau stated that if Allband determined that additional support above the \$250 cap was necessary after June 30, 2015, “Allband should file with the Bureau the financial and operational information necessary for the Bureau to determine what further relief is appropriate based on the specific circumstances present at that time.”¹²

5. On December 31, 2014, Allband filed a petition for further waiver of section 54.302 and included its 2012 and 2013 audited financial statements.¹³ In the Further Waiver Petition, Allband requests that the Commission extend Allband’s current waiver for an additional 12 years.¹⁴ Allband states that a waiver is necessary to allow Allband to continue to provide voice services, repay its Rural Utilities

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waiver standard to assist potential applicants in effectively formulating their waiver petitions. *See Connect America Fund et al.*, WC Docket No 10-90 *et al.*, Fifth Order on Reconsideration, 27 FCC Rcd 14549, 14556-57, para. 19 (2012) (*Fifth Order on Reconsideration*). Generally, the Commission’s rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission’s rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule and (ii) such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17840, para. 540.

⁷ *Id.* at 17840, 17842, paras. 540, 544.

⁸ *Id.* at 17766, para. 278.

⁹ *Id.* at 17840-42, paras. 542, 544.

¹⁰ *Fifth Order on Reconsideration*, 27 FCC Rcd at 14557, para. 21.

¹¹ *See Allband Communications Cooperative Petition for Waiver of Certain High-Cost Universal Service Rules*, WC Docket No. 10-90, Order, 27 FCC Rcd 8310 (Wireline Comp. Bur. 2012) (July 2012 Waiver).

¹² *Id.* at 8315, para. 16.

¹³ Petition of Allband Communications Cooperative for Further Waiver of Part 54.302, WC Docket No. 10-90, *et al.* (filed Dec. 31, 2014) (Further Waiver Petition).

¹⁴ *Id.* at 1.

Service loan, and continue operations.¹⁵ Subsequently, on May 18, 2015, Allband filed its 2014 audited financial statements.¹⁶

6. On June 29, 2015, the Bureau extended the July 2012 Waiver on an interim basis for six months until the earlier of either December 31, 2015 or the date on which further action was taken on the pending Further Waiver Request, without prejudice to the ultimate determination as to whether relief is warranted.¹⁷ In the Order, the Bureau also directed the Universal Service Administrative Company (USAC) to undertake inquiries on certain accounting issues and report its findings to the Bureau.¹⁸

7. On October 23, 2015, USAC submitted a memorandum summarizing the results of its inquiries into the record.¹⁹ On November 12, 2015, Allband filed a response to the USAC Memorandum.²⁰

III. DISCUSSION

8. Allband's response to the USAC Memorandum raises several accounting and cost allocation issues that require further Bureau analysis. Therefore, we extend the July 2012 Waiver on an interim basis until the earlier of either June 30, 2016 or the date on which further action is taken on the pending Further Waiver Petition. As such, USAC shall continue to provide to Allband the lesser of high-cost universal service support based on Allband's actual costs or the annualized total high-cost support that it received for the period January 1, 2012 through June 30, 2012.²¹ This will maintain the status quo while the Bureau continues to review the information in the record. We note that universal service support amounts may be adjusted retroactively if it is determined that Allband has received support amounts in the past to which it was not entitled.²²

¹⁵ *Id.*

¹⁶ See Letter from Don L. Keskey, Counsel for Allband Communications Cooperative, to Marlene H. Dortch, Federal Communications Commission Secretary, Attach. B (filed May 18, 2015).

¹⁷ See *Allband Communications Cooperative Petition for Waiver of Certain High-Cost Universal Service Rules*, WC Docket No. 10-90, Order, 30 FCC Rcd 6955, 6955, para. 1 (Wireline Comp. Bur. 2015).

¹⁸ *Id.* at 6960, para. 15.

¹⁹ See Sept. 23, 2015 Memorandum from Universal Service Administrative Company Internal Audit Division to Federal Communications Commission Wireline Competition Bureau, WC Docket No. 10-90 (filed Oct. 23, 2015) (USAC Memorandum).

²⁰ See Letter from Don L. Keskey, Counsel for Allband Communications Cooperative, to Marlene H. Dortch, Federal Communications Commission Secretary, WC Docket No. 10-90, *et al.* (filed Nov. 12, 2015).

²¹ See, e.g., *Petitions for Waiver of Windy City Cellular, LLC and Adak Eagle Enterprise, LLC*, WC Docket Nos. 10-90, 10-208, Order, 27 FCC Rcd 15836, 15839, para. 10 (Wireline Comp. Bur. and Wireless Tel. Bur. 2012) (granting interim support because additional time was required to review a waiver of the \$250 cap), *Petitions for Waiver of Windy City Cellular, LLC and Adak Eagle Enterprise, LLC*, WC Docket Nos. 10-90, 10-208, Order, 28 FCC Rcd 8498, 8498, para. 1 (Wireline Comp. Bur. and Wireless Tel. Bur. 2013) (extending the grant of interim relief of the \$250 cap for one month while the Bureau and Wireless Telecommunications Bureau reviewed the waiver petition), and *Petitions for Waiver of Windy City Cellular, LLC and Adak Eagle Enterprise, LLC*, WC Docket Nos. 10-90, 10-208, Order, 29 FCC Rcd 2112, 2112, para. 1 (Wireline Comp. Bur. and Wireless Tel. Bur. 2014) (extending interim support for a period of no longer than six months pending review of a Petition for Reconsideration and/or Application for Review).

²² Universal service support may be used "only for the provision, maintenance and upgrading of facilities and services for which the support is intended." 47 U.S.C. §254(e), 47 C.F.R. § 54.7. See also *All Universal Service High-Cost Support Recipients Are Reminded That Support Must Be Used for Its Intended Purpose*, WC Docket No. 10-90, WC Docket No. 14-58, Public Notice, FCC 15-133 (Oct. 19, 2015).

IV. ORDERING CLAUSES

9. IT IS ORDERED, pursuant to the authority contained in sections 4(i), 4(j) and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 254, sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, and paragraph 544 of the *USF/ICC Transformation Order*,²³ FCC 11-161, that the Universal Service Administrative Company SHALL MAKE payment to Allband Communications Cooperative in accordance with the amount, terms, and conditions described herein.

10. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Matthew S. DelNero
Chief
Wireline Competition Bureau

²³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17842, para. 544.